

SERVICE DATE – LATE RELEASE MARCH 16, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 394X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN
AURORA, PORTAGE COUNTY, OHIO

Docket No. AB 1257X

CLEVELAND COMMERCIAL RAILROAD COMPANY, LLC—DISCONTINUANCE OF
LEASE AND OPERATION AUTHORITY—IN AURORA, PORTAGE COUNTY, OHIO

Decided: March 16, 2018

On November 13, 2017, Norfolk Southern Railway Company (NSR) and Cleveland Commercial Railroad Company, LLC (CCR) (collectively, Applicants), jointly filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments and Discontinuances of Service for NSR to abandon, and for CCR to discontinue service over, approximately 5.5 miles of rail line between milepost RH 22.0 and milepost RH 27.5 in Aurora, Portage County, Ohio (the Line).¹ Notice of the exemption was served and published in the Federal Register on December 1, 2017 (82 Fed. Reg. 57,021). The exemption became effective on January 2, 2018.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) on December 8, 2017, requesting comments by December 21, 2017. In the EA, OEA recommended that a historic preservation condition under Section 106 of the National Historic Preservation Act, 54 U.S.C. § 306108, be imposed on any decision granting abandonment authority.

By decision served December 28, 2017, the Board imposed the recommended Section 106 condition as well as a public use condition under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.28 requested by the Portage Park District and the City of Aurora and denied a request for a Notice of Interim Train Use or Abandonment. The public use and Section 106 conditions remain barriers to consummation, so the abandonment cannot yet be consummated, and the Board retains jurisdiction over the Line.

¹ In 2009, CCR was authorized to lease and operate the Line as part of a longer, 25.3-mile line, pursuant to an agreement with NSR. See Cleveland Commercial R.R.—Lease & Operation Exemption—Norfolk S. Ry., FD 35251 (STB served May 29, 2009).

On February 9, 2018, OEA issued a Supplemental Final EA following receipt of a letter dated January 16, 2018, from the Miami Tribe of Oklahoma (Miami Tribe). The letter stated that the Miami Tribe has no objection to the proposed abandonment but requests immediate consultation if any human remains or Native American cultural items falling under the Native American Graves Protection and Repatriation Act or archeological evidence is discovered during any phase of the proposed abandonment. Thus, OEA recommends that an unanticipated discovery condition be imposed.

Consistent with OEA's recommendation, this proceeding will be reopened, and the additional condition recommended in the Supplemental Final EA will be imposed. The proposed abandonment, if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on December 1, 2017, exempting the abandonment of the Line described above, is subject to the additional condition that, in the event that any unanticipated archaeological sites, human remains, funerary items or associated artifacts are discovered during salvage activities, NSR will immediately cease all work and notify OEA, interested federally recognized tribes, the SHPO, and the Miami Tribe Tribal Preservation Officer (THPO) pursuant to 36 C.F.R. § 800.13(b). OEA shall then consult with the SHPO (or THPO), interested federally recognized tribes, NSR, and other consulting parties, if any, to determine whether appropriate mitigation measures are necessary.
3. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.